

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NUMBER:

**IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION**

19-md-02875-RBK-KMW

**MOTION FOR SANCTIONS AND
STATUS CONFERENCE VIA
REMOTE ZOOM VIDEOCONFERENCE**

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
September 8, 2021
Commencing at 3:00 p.m.

B E F O R E:

**THE HONORABLE THOMAS I. VANASKIE (RET.)
SPECIAL MASTER**

A P P E A R A N C E S:

MAZIE SLATER KATZ & FREEMAN, LLC
BY: ADAM M. SLATER, ESQUIRE
103 Eisenhower Parkway
Roseland, New Jersey 07068
For the Plaintiffs

KANNER & WHITELEY, LLC
BY: CONLEE S. WHITELEY, ESQUIRE
701 Camp Street
New Orleans, Louisiana 70130
For the Plaintiffs

DUANE MORRIS LLP
BY: SETH A. GOLDBERG, ESQUIRE
BY: KELLY ANN BONNER, ESQUIRE
30 South 17th Street
Philadelphia, Pennsylvania 19103
For the Defendants, Princeton Pharmaceuticals,
Solco Healthcare U.S. LLC, and
Zhejiang Huahai Pharmaceuticals Ltd.

Camille Pedano, Official Court Reporter
camillepedano@gmail.com
609-774-1494

Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription.

1 A P P E A R A N C E S (Continued):

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GREENBERG TRAURIG LLP
BY: STEVEN M. HARKINS, ESQUIRE
3333 Piedmont Road, NE, Suite 2500
Atlanta, Georgia 30305
For the Defendants, Teva Pharmaceutical Industries Ltd.,
Teva Pharmaceuticals USA, Inc., Actavis LLC,
and Actavis Pharma, Inc.

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ALSO PRESENT:

LORETTA SMITH, ESQUIRE
Judicial Law Clerk to The Honorable Robert B. Kugler

Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held via remote Zoom videoconference before The
2 Honorable Thomas I. Vanaskie, (Ret.), Special Master, at 3:15
3 p.m.)

4 JUDGE VANASKIE. Ready to proceed?

5 MR. SLATER: Yes, Your Honor.

6 MR. GOLDBERG: Yes, Your Honor.

7 JUDGE VANASKIE: Let's follow our normal protocol. If
8 you are not speaking, please mute your microphone.

9 We are going to hear argument first on the motion of
10 plaintiffs for sanctions against the ZHP parties in connection
11 with the depositions and then we will have our monthly
12 conference call, which should be brief, following the oral
13 argument.

14 And we'll hear first from plaintiffs as the movant on
15 this motion for sanctions. And we'll start, however, with a
16 question from me, and I'll direct it first to Mr. Slater and
17 then to Mr. Goldberg, and the question I have is one of
18 authority. That is, do I have the authority to decide and
19 grant the relief requested by plaintiffs on this motion for
20 sanctions? Is this a discovery dispute or is this a dispute
21 that deals with admissibility of evidence that's reserved for
22 the trial judge?

23 MR. SLATER: Thank you, Your Honor. Adam Slater, for
24 the record.

25 I think the simple answer to Your Honor's question is

1 yes, of course you have the authority. Your Honor has already
2 recognized that during the course of the hearings that took
3 place during the Peng Dong deposition. And we've cited
4 multiple sources of authority that make it very clear that Your
5 Honor, as the equivalent to the magistrate judge, does have the
6 authority to address these discovery issues which have to do
7 with the mode and the conduct of depositions. And quoting from
8 the *Hall vs. Precision* case, Your Honor can, "enter any orders
9 necessary to prevent the abuse of the discovery and deposition
10 process." So that's -- I think that's what we're doing here.
11 And the *Wachtel* case we cited talked about, "the inherent power
12 to police litigant misconduct in post-sanctions on those who
13 abuse judicial process." That's, again, another District of
14 New Jersey case. And we've also cited to Your Honor, among
15 other things, the *Black Horse* case, which I think makes it very
16 clear that Your Honor has the authority to do so. And that
17 was, I think, a decision by Judge Schwartz. So I think that
18 there's plenty of authority. We can keep going through it.

19 The *Exxon Mobil* case, which we provided Your Honor,
20 which I found to be very timely, in light of what was happening
21 here, it has a lot of the same themes and the same issues.

22 So certainly this is not an issue of admissibility.
23 We're asking Your Honor to assess certain sanctions based upon
24 obstruction of the depositions. What will be admissible or not
25 be admissible later, that's going to be a decision for the

1 judge, but Your Honor certainly has the ability to determine
2 how to address what we believe was improper deposition conduct
3 in an ongoing matter. So I don't think there's really any
4 solid argument to say Your Honor cannot grant the relief that's
5 been --

6 (Videoconference call interrupted.)

7 JUDGE VANASKIE: Do you want to try to pick up.

8 MR. SLATER: I will try.

9 -- the relief that's been requested. And since I don't
10 remember if I listed the cases before or after, I'll just
11 reiterate that I cited to is --

12 (Videoconference call interrupted.)

13 JUDGE VANASKIE: Mr. Slater, are you ready to
14 continue?

15 MR. SLATER: I am, Judge.

16 JUDGE VANASKIE: Okay. Great.

17 MR. SLATER: I think that probably just in order to be
18 cautious, I'm going to start over a little bit just to make
19 sure we get this.

20 JUDGE VANASKIE: That's fine.

21 MR. SLATER: My argument is not that lengthy.

22 Your Honor asked first whether Your Honor has the
23 authority to grant the requested relief and, as stated earlier,
24 we believe there is no question about that. Your Honor's
25 authority is commensurate with what a magistrate judge would be

1 allowed to do and clearly that's something that a magistrate
2 judge can do all the time is enter sanctions based on
3 deposition conduct.

4 As we cited in our brief, the *Neurontin* case, which was
5 Judge Schwartz as a magistrate, is a very favorable case to our
6 position. In that case, Judge Schwartz entered extensive
7 sanctions based on deposition conduct and even made rulings
8 about what would happen at the time of trial. So this
9 distinction that ZHP's been trying to draw between discovery
10 versus trial, I think in this context is a false distinction.
11 We're not asking Your Honor to make any admissibility
12 determinations. We're asking Your Honor to sanction
13 obstructive deposition conduct by the witnesses who were
14 speaking for the company and counsel who both objected
15 improperly and further encouraged the witnesses.

16 So we cited the *Hall* case, we cited the *Neurontin* case,
17 which relies heavily on the *Black Horse Lane Associates*, and
18 talks specifically I think to this situation under Rule 37D
19 where a witness doesn't provide any helpful or complete
20 testimony, and the Court actually said that going to the
21 deposition and not having the ability to answer as a 30(B)(6)
22 witness is the same as not showing up or sleeping through the
23 deposition. So these are cases where these types of sanctions
24 have been entered.

25 The Court rules that are applicable, 30(B)(2), 37(B) and

1 37(D), are all available to Your Honor and all can be the
2 source of your rulings, you know, depending on how Your Honor
3 wants to go with this. So the idea that there is not authority
4 by Your Honor to do this or to enter these sanctions, it's very
5 hard to understand where the defense gets that argument.
6 That's my take on it for Your Honor.

7 JUDGE VANASKIE: All right. Very well.

8 Let me ask you one question, Mr. Slater. Do any of the
9 authorities you have cited impose as a sanction deeming certain
10 matters admitted?

11 MR. SLATER: I don't believe that that relief was
12 requested in those cases that we're citing to, but there is no
13 reason why Your Honor wouldn't have the right to do that or the
14 authority to do that because it's certainly one of the
15 sanctions that would be available. And it's certainly -- it
16 was the one Your Honor came to when we were having the hearings
17 and it's the one that makes the most sense because the time and
18 expense and distraction of having to go back and redepose these
19 witnesses, that's a very, very difficult thing for us to have
20 to do.

21 Look, if Your Honor rejects all of the relief, we would
22 have no choice but to take that fallback position, which we've
23 expressed in our reply brief, but certainly Your Honor has the
24 ability to do that.

25 JUDGE VANASKIE: Thank you very much.

1 Mr. Goldberg?

2 MR. GOLDBERG: Your Honor, just on the specific
3 question of authority, there's no question Your Honor, in this
4 role as a Special Discovery Master, has the authority to make
5 rulings with respect to deposition conduct. I think the
6 question is really, what is the specific relief that Mr. Slater
7 is seeking with respect to the deposition testimony? He is
8 seeking an evidentiary ruling. In fact, Your Honor, he's
9 seeking to have Your Honor rule on the ultimate question in the
10 case, and to deem the ultimate question admitted, as an
11 admitted fact, that for all purposes would be admissible at a
12 trial. That clearly is an evidentiary ruling that's left for
13 the trial judge, and especially in the context of this MDL
14 where a trial is many years away, we don't think that that
15 specific kind of evidentiary ruling, the deeming the ultimate
16 question admitted, is something within the Special Discovery
17 Master's authority.

18 Certainly --

19 JUDGE VANASKIE: You keep referring to having evidence
20 admitted at trial, but certainly deposition testimony can be
21 presented in connection with, say, for example, a summary
22 judgment motion or an *in limine* motion. All right. You're
23 saying that's a matter that also should be left to the trial
24 judge or if the judge refers those matters out, the judge could
25 refer that matter to Magistrate Judge Williams and she would

1 have the authority to do that, or the judge could refer it to a
2 Special Master to make a report and recommendation. Would then
3 the Special Master have the authority?

4 MR. GOLDBERG: Well, certainly, if the federal court
5 judge cloaked Your Honor, the Special Discovery Master, with
6 that specific authority, I suppose we would address it then.

7 I think the issue that Your Honor raises with respect to
8 summary judgment is a good one, which is that Your Honor is in
9 the position here of ruling on these critical facts of the
10 case. And, you know, I could point you to some of the specific
11 excerpts that plaintiffs have cited, but they are asking Your
12 Honor to rule for -- as admitted for all purposes, summary
13 judgment, motion in limine, and, of course, trial, that could
14 not be disputed, for instance, that ZHP knew that nitrosamines
15 were in its valsartan and that could cause an increased risk of
16 cancer. That's the ultimate question in this case and
17 plaintiffs are asking Your Honor, the Special Discovery Master,
18 to deem it admitted for all purposes.

19 I think it's helpful that Mr. Slater referred to some of
20 the cases he did because when Your Honor asked the question,
21 did any of the cases provide that kind of relief, deeming
22 admitted the ultimate question, Mr. Slater said, no, because
23 none of them do.

24 And, in fact, Your Honor, if you look at *Black Horse*
25 *Lane* and you look at Pages 295 and 96 of that decision and you

1 look at Pages 300 and 301 of that decision, what you will see
2 is that the district court judge and the federal court judge --
3 the magistrate judge and the federal court judge issued
4 sanctions in that case because the conduct was extreme, it was
5 egregious, it was repeated, it was over-the-top offensive
6 conduct, and it's very clear from that decision.

7 In the *Exxon Mobil* case that Mr. Slater referred to, the
8 same issue, the conduct is repeated, it's pervasive, it's
9 over-the-top egregious conduct. So there's sort of two prongs
10 there.

11 We don't think Your Honor has the authority on the
12 specific question of deeming facts admitted, the ultimate fact
13 admitted, but we also don't think under the case law that that
14 kind of a decision would be warranted, even if Your Honor had
15 some debate as to whether you have the authority to do so. And
16 we think the case law that both parties cited is very clear
17 that the standard in this Circuit for issuing any form of
18 discovery sanction, let alone the kind of discovery sanction
19 that plaintiffs are asking for, deeming admitted the ultimate
20 question, that standard is intentional interference and bad
21 faith of the worst kind and, as I'll discuss shortly, there is
22 none of that here, Your Honor.

23 JUDGE VANASKIE: Thank you. Thank you, Mr. Goldberg.

24 Mr. Slater, do you want to go through the aspects of
25 your motion then?

1 MR. SLATER: If I could, Your Honor, and I'll start
2 off just by briefly responding.

3 I'm not sure what counsel was just arguing that any
4 discovery sanction would have to prove intentional interference
5 or intentional willful misconduct. We've already cited some
6 law that says that's not necessary and certainly I think that
7 standard's met.

8 Coming back to what counsel said, I think the vocabulary
9 and the semantics we use will be helpful going forward.

10 What we're talking about now is discovery sanctions
11 setting the testimony, if Your Honor rules in our favor, as
12 questions either being admitted or in some of the cases the
13 answer would be no, obviously; but counsel says, well, that's
14 an admissibility determination but it's not. Later, whatever
15 the testimony is, the Court will rule on what's admissible or
16 what's not, based on if any motions are made objecting to
17 certain testimony. So there's no predisposition now as to
18 what's going to be admissible or not at trial or what will be
19 relied on in summary judgment.

20 This is a request for specific discovery sanctions that
21 Your Honor had referenced. And I'll tell you right now, in
22 looking, for example, at Rule 30(B)(2), I believe, or 30(C)(2),
23 the sanction that is potentially available for the obstruction
24 of depositions is, "The Court may impose an appropriate
25 sanction, including reasonable expenses and attorney's fees

1 incurred by a party, on a person who impedes, delays or
2 frustrates the fair examination of the deponent." It's not
3 limited. It's the Court's discretion to decide what an
4 appropriate sanction is.

5 And in Rule 37(B) -- actually it's 37(B), Subsection
6 (A) (1), one of the potential sanctions is directing that, "the
7 matters embraced in the order or other designated facts be
8 taken as established for purposes of the action as the
9 prevailing party claims." So that specifically addresses your
10 question; you clearly have the authority to do so.

11 And I cited the *Wachtel* case that said that Your Honor
12 has "the inherent power to police litigant misconduct as
13 necessary." And, again, I'll ask Your Honor, you can look
14 again at Judge Schwartz's decision, which was affirmed,
15 obviously, in the other case.

16 Now, beyond the authority question, which we don't think
17 there's any real reasonable argument against, the conduct that
18 we're looking at here was not isolated, it was systemic, and I
19 think that's a very important fact. We've given you examples
20 across multiple depositions, and I can tell Your Honor, we
21 could have done it for, I would say, pretty much every witness,
22 if not every witness, deposed that was defended by ZHP's
23 counsel who was either a current or former employee; but we've
24 given you so many examples across so many witnesses and so many
25 different types of questions that it's clear this was a

1 systemic obstructive pattern that we had to deal with. We've
2 shown you examples of very basic questions.

3 And one of the things I'm going to try to avoid, unless
4 Your Honor has a specific question, I'm assuming you'll thank
5 me for this, is to go through the specifics. If there's any
6 that you think are illustrative or you have a question about,
7 I'll certainly address it but it's obviously too big a bite.
8 So if we start with one then we're in for the whole, and I'm
9 going to avoid that unless you ask me to.

10 JUDGE VANASKIE: No, I am not asking you to.

11 I will ask you this: The deponents, the examples that
12 you gave me, who were -- were there persons conducting the
13 deposition, taking the deposition, interrogating the witnesses,
14 other than you involved?

15 MR. SLATER: I would have to look. It's possible that
16 one of -- I think that a few of the entries were by other
17 questioners. I think Lane Hilton was questioning at one point
18 and it may be a few of the entries. And I wasn't sure why
19 counsel focused on that but since you asked the question, you
20 know, we have different tasks and we have different things that
21 we have to do as part of this team. So I don't think it should
22 be any surprise that I would have, as the person assigned to do
23 this motion, would focus on testimony that I was most familiar
24 with. I can promise Your Honor these tactics occurred
25 throughout the depositions, not just when I was questioning.

1 But, again, these are not limited only to examples from
2 testimony I obtained.

3 JUDGE VANASKIE: Okay.

4 MR. SLATER: So really, really what I think I'm trying
5 to address in a brief way, which is a lot of testimony, is the
6 fact that these witnesses were asked very basic questions, and
7 I'll go through the different levels of relief that we're
8 looking at.

9 Number one, there were many objections where I think
10 anybody can objectively look at that and say, you can't object
11 to that question as a form objection, it's a straightforward
12 question, or you can't object on foundation. And then the
13 worst culprit of all is the, you don't have to listen to
14 plaintiff counsel and give a yes or no, you say whatever you
15 think you need to say, which, from my perspective, and our
16 perspective, is telling the witness, you're doing great, keep
17 it up. Don't give him a yes or no because he's wrong, you
18 don't have to do it, stick to the plan.

19 I don't think that there's any reach or stretch to what
20 I've just said because the testimony is so clear. I mean, at
21 one point I asked one of the witnesses, Peng Dong, about
22 specific language in a specific document, laying a foundation
23 and move to the next question, and the answer was, "I see a
24 paragraph in Chinese." And that's, I think, a good example of
25 what went on during the deposition.

1 I think that one of the -- so we've talked a little bit
2 about your authority to deem testimony admitted. You certainly
3 have the authority to strike objections and strike
4 nonresponsive testimony. And the tie-in to that is, well, now,
5 let's get an answer to the question imposed by the Court which
6 makes sense. So I think that there's no logical way to do this
7 otherwise. And it's clear that the answers were, in many
8 cases, not responsive, and we think in all the cases where we
9 pointed out they were not responsive. And we tried to pick,
10 obviously, direct examples that would be easy for the Court to
11 rule on. We didn't want to get into the gray area because we
12 are not going to push for things that are not, from our
13 perspective, clear.

14 There's another major area to this, and counsel spent a
15 few pages on it, we obviously briefed it extensively, which is
16 the Min Li testimony.

17 Min Li, who is a Johns Hopkins Ph.D. organic chemist,
18 who consulted directly with a toxicologist retained by ZHP to
19 come up with all the responses to the regulators and their
20 customers and the world about what is the risk of these
21 nitrosamines, wouldn't answer the most basic questions and
22 ultimately deferred to, well, I'm not a toxicologist, you need
23 somebody better able to answer these questions. And from our
24 perspective, that's the most egregious and the most clear
25 example because this is the person who's designated by the

1 company to testify on a topic that is court ordered. Anybody
2 who reads that topic understands exactly what it encompasses.
3 And with counsel's blessing, the witness just refused to answer
4 a whole host of questions.

5 And what we've given Your Honor, and we've cited to a
6 couple cases that we think are very, very helpful, I think the
7 *SmithKline vs. Apotex* case is very, very instructive. It's a
8 very similar situation with a pharmaceutical company. And in
9 that case the Court said, look, if this is a technical issue
10 that's highly technical, that doesn't take it out of play in
11 terms of being able to ask a lay opinion or a lay witness the
12 questions, because if this is something that's addressed in the
13 day-to-day business, some companies handle technical matters,
14 and something may sound like expert to you or I but it's what
15 these people do every day.

16 These are pharmaceutical manufacturers who are
17 responsible to be experts about their products and to know all
18 the risks, and, in fact, took positions in documents we gave
19 you and told the world what the risk level was, told the FDA
20 what the risk level was, and provided the details of their
21 analysis. So the idea that their 30(B)(6) witness can't talk
22 to what the company did on its own, that's belied by the case
23 law that we cited to Your Honor. And I think the *Aslan* case is
24 also very important, which we cited both in our reply brief.

25 So the suggestion that ZHP can ultimately evade its

1 obligation to provide responsive testimony on court-ordered
2 topics by just claiming, well, there's probably somebody better
3 to answer these questions, that's just -- that's sanctionable
4 on its face because they had an obligation to designate
5 witnesses who were knowledgeable.

6 I'm obviously trying to take sort of an overview.

7 JUDGE VANASKIE: Broad brush, yes.

8 MR. SLATER: And I'm more than ready to go into the
9 details about every single issue here, but maybe I'll hand off
10 to Your Honor or to defense counsel and respond when I know
11 what's really being placed in issue.

12 JUDGE VANASKIE: All right. Let's hear from Mr.
13 Goldberg.

14 MR. GOLDBERG: Thank you, Your Honor.

15 I think there are a few overarching points that Your
16 Honor needs to keep in mind as you evaluate this motion. And I
17 think the first one is the massive record of deposition
18 testimony the ZHP party witnesses provided in this case and the
19 arduous circumstances in which they were provided.

20 The second point is that all of the answers and all of
21 the objections were within the bounds of normal and proper
22 discovery.

23 And the third point, which we've already covered in some
24 respect, Your Honor, is that the kind of sanctions that
25 plaintiffs are seeking, deeming facts admitted, especially

1 ultimate facts, is really reserved for the most egregious
2 conduct.

3 But the first point is really something Your Honor needs
4 to keep in mind. The ZHP parties provided 6,194 pages, 6,194
5 pages of deposition testimony. All of the excerpts that
6 plaintiffs cited in their brief, if you add them up, it totals
7 51 pages of the deposition testimony provided by the 17
8 witnesses. If you do the math, plaintiffs are arguing, and
9 they're calling systemic, less than one percent of the
10 deposition testimony.

11 The ZHP party witnesses provided 202 hours and 47
12 minutes of testimony over 44 deposition sessions. Just over 64
13 of those hours were provided by witnesses who did not require
14 translation. More than 138 of those hours were provided by
15 witnesses who did require translation from Chinese to English
16 and English to Chinese. The 51 pages plaintiffs have cited is
17 0.82 percent, 0.82 percent of the deposition testimony, less
18 than one percent.

19 Beyond that, Your Honor, it's good to keep in mind the
20 circumstances for these depositions because these depositions
21 were really unique. Eleven of the Chinese witnesses traveled
22 to another country up to eight to ten hours during a global
23 pandemic, risking their health and safety, and quarantining
24 both where they arrived to take the deposition and when they
25 returned. They sat alone in a hotel room to provide the

1 testimony. The testimony was highly technical in nature,
2 pharmaceutical manufacturing concepts, chemistry concepts,
3 scientific terminology. All of the lawyers, witnesses, court
4 reporter, videographer were in different countries, in
5 different cities and on different time zones. The witnesses
6 were up, starting their depositions in China at 7 a.m. The
7 lawyers were starting the depositions on the East Coast at 7
8 p.m., and they went well into the night, to 1, 2 a.m. at times.
9 There were technical glitches, there were translation mishaps,
10 there was a lot of confusion. And that happens in regular
11 depositions when we're all sitting in the same conference room,
12 and it was magnified by Zoom.

13 Your Honor, I'm not referring to these kinds of
14 circumstances as an excuse for any alleged obstructionist
15 conduct because there was none. What I am referring to it for,
16 Your Honor, is because it demonstrates that the ZHP witnesses
17 cooperated to the fullest extent possible. They went above and
18 beyond. None of the lawyers traveled for these depositions
19 during a global pandemic, but the witnesses did. They went
20 above and beyond to provide -- to provide the testimony that
21 they provided.

22 The fact that plaintiffs haven't challenged 99 percent
23 of the testimony demonstrates the good-faith efforts of these
24 ZHP party witnesses and Your Honor has to take that into
25 account. You don't conclude from less than one percent that

1 all 99 percent must be bad. You conclude from the 99 percent
2 that there's nothing wrong with the 0.82 percent that
3 plaintiffs seem to be challenging.

4 And Your Honor drew the right -- you know, asked the
5 right question of Mr. Slater. He is the only lawyer who
6 challenged any of the deposition testimony. None of his
7 colleagues joined in the motion, none of his colleagues joined
8 in the reply. His brief has been pending for months and you
9 haven't heard a single plaintiffs' lawyer say, you know, Your
10 Honor, I also had witnesses who were obstructed. And the best
11 demonstration of that is two of the lawyers shared questioning
12 with Mr. Slater for two of the witnesses at issue. Ms. Hilton
13 shared the questioning of Ms. Linda Lin and Mr. Horton shared
14 the questioning of Hai Wang. Neither of those lawyers have
15 challenged any of the conduct. Only one excerpt in plaintiffs'
16 motion, it's Linda Lin, I looked at it while he was answering
17 your question, Excerpt 6, there's a question asked by Ms.
18 Hilton. So only one question in the 6,194 pages of testimony
19 is being challenged by -- or was asked by a lawyer other than
20 Mr. Slater and that lawyer has not even raised the issues.
21 This is Mr. Slater's motion because Mr. Slater is really trying
22 to get Your Honor to grant some relief on the notion that if he
23 asks for the most drastic form of relief, maybe he'll get
24 something.

25 JUDGE VANASKIE: What do I make, Mr. Goldberg, of the

1 excerpts to which Mr. Slater made reference from Peng Dong?
2 I'm looking at Mr. Slater's brief now and he's quoting from the
3 transcript. The question was:

4 "Looking now at the Explanation section, this provides
5 the explanation for why this was being done, correct?

6 "Object to form."

7 And that's a good objection, by the way, looking at that
8 question.

9 The answer is: "On the screen in the Explanation
10 section, there's a paragraph written in Chinese."

11 What was Mr. Dong providing there? I mean, he certainly
12 didn't seem to be responding to anything.

13 MR. GOLDBERG: Your Honor, I can show you the video.
14 I have the video if you want to see it. And I would like to
15 show you a video just so you get a sense of what's happening
16 here. But really what's happening here is Mr. Dong is sitting
17 in a hotel room all alone. He's got two computer screens up.
18 Mr. Slater has put up a document that Mr. Dong did not write,
19 Mr. Dong may not have seen before, and the question is being
20 asked, and I'm happy to play this clip for Your Honor, the
21 question is being asked, Mr. Dong, look at the screen, and he's
22 trying -- this is a -- this is a person who speaks no English,
23 he's never been deposed before, and he's trying to -- he is
24 trying to follow along in earnest. What's happening is, when
25 Mr. Slater -- what you're missing here, Your Honor, if I can

1 show you the video clip --

2 JUDGE VANASKIE: You know, I'd be happy to see it if
3 you have a way to share the screen and pull it up.

4 MR. GOLDBERG: Yes, I can show you that one or I can
5 just show you an example that I have queued up. Would you like
6 to see --

7 JUDGE VANASKIE: If you have it queued up, you don't
8 have to show me that exact one.

9 MR. GOLDBERG: Okay. So this is an example. In fact,
10 this witness is looking at a document right now. I'm going to
11 see if I can share my screen.

12 MR. SLATER: Can I ask if this is one of the excerpts
13 that is at issue --

14 MR. GOLDBERG: Yes, This is Linda Lin.

15 MR. SLATER: -- and which one it is?

16 MR. GOLDBERG: This is Linda Lin, Excerpt 2. I just
17 picked it because it was just a pretty straightforward clip
18 here. And I think I go here.

19 So this is Ms. Lin, Your Honor. She traveled from China
20 to Macao, she is sitting alone in a hotel room. She had to set
21 the room up so that she could cooperate and do this deposition.
22 And this is how it went.

23 (Videotape is played.)

24 MR. GOLDBERG: Your Honor, I'd be happy to share with
25 you the video of the excerpt that you were asking about of Peng

1 Dong, but I can say, and because I think it gives you -- it
2 will give you additional flavor, if Your Honor would like to
3 see it, of what is happening.

4 What you can see is that the witness is sitting there
5 earnestly trying to answer the question, and it's a question
6 that although Mr. Slater believes should be answered yes or no,
7 the witness is answering on her own and explaining -- actually
8 providing a real substantive answer, which is, look, in 2013,
9 this is -- the document is from 2013 and it says what it says
10 because that's what we knew at the time. There's no -- you
11 know, that testimony is really unremarkable.

12 And that is what these depositions were like, for 44
13 sessions these witnesses providing or attempting to provide
14 their firsthand knowledge in an earnest way and to answer Mr.
15 Slater's questions.

16 And I'd be happy to share with you the Peng Dong excerpt
17 so Your Honor could see what that was like, if it would be
18 helpful.

19 JUDGE VANASKIE: I think that would be helpful.

20 Is there any objection to that, Mr. Slater?

21 MR. SLATER: Sorry, I didn't realize I was muted.

22 The request is to play the Peng Dong testimony?

23 JUDGE VANASKIE: Yes.

24 MR. SLATER: No. I was actually thankful they played
25 the Linda Lin. I thought it made our argument very well, so

1 I'm happy for them to play the next one, too.

2 JUDGE VANASKIE: Okay. Please do.

3 MR. GOLDBERG: Okay. I'm going to ask my colleague,
4 Kelly Bonner, if she could play that now.

5 MS. BONNER: The host has disabled participant's
6 screen sharing.

7 JUDGE VANASKIE: Mr. MacStravic, are you able to
8 provide screen sharing for Ms. Bonner?

9 MS. BONNER: I am the co-host now.

10 MR. GOLDBERG: I might be able to pull it up, Judge.

11 JUDGE VANASKIE: Are you able to pull it up now that
12 you are the co-host?

13 MS. BONNER: All right.

14 JUDGE VANASKIE: Thank you, Larry.

15 We are not picking up the volume.

16 MR. GOLDBERG: Kelly, you may need to turn your volume
17 up.

18 JUDGE VANASKIE: Yes, we're not getting any volume.

19 MR. GOLDBERG: Kelly, why don't you unshare your
20 screen. I think I can play this.

21 MS. BONNER: Okay. I apologize. I've got the volume
22 turned up as loud as it will go.

23 JUDGE VANASKIE: Okay, Mr. Goldberg, why don't you try
24 on your end. We will give it one more shot.

25 MR. GOLDBERG: Yes.

1 Your Honor, I think this excerpt actually picks up on my
2 video a little bit before where the questioning that you're
3 referring to starts.

4 JUDGE VANASKIE: Okay.

5 MR. GOLDBERG: It's a little bit above that
6 questioning.

7 (Videotape is played.)

8 MR. GOLDBERG: That's the end of that.

9 I think, Your Honor, the one thing that is -- leaving
10 aside counsel sparring with one another, when you just think
11 about what Mr. Dong is doing, one, he's clearly confused about
12 what he is doing, what these documents -- what he is looking
13 at, how he is supposed to answer. And what he wants to do is
14 tell the truth. And, remember, he's in a -- he's coming from a
15 place where people get interrogated and I think some of what's
16 going on here is he doesn't really appreciate, you know, that
17 this is -- what a deposition in U.S. civil litigation is like.
18 And to him, what he's really trying to do is tell the truth.
19 He's clearly confused by why Mr. Slater is asking about a
20 specific sentence in a document that he didn't write. And Mr.
21 Slater did not, if you look at the deposition testimony for
22 this specific excerpt, and I would encourage Your Honor to
23 start at the beginning, he did not establish a foundation for
24 Mr. Dong having any knowledge about this document. And that's
25 what he has to do.

1 And there are other objections relating to this whole
2 line of testimony where Mr. Ball, my colleague, is objecting
3 because there's not a proper foundation being laid. And that's
4 something that happens throughout the testimony, is asking
5 witnesses questions about documents they didn't write, asking
6 them to read documents that say what they say and then expect
7 an answer that's -- and Your Honor has already admonished Mr.
8 Slater not to do that.

9 But I think these two clips, one, they show witnesses
10 earnestly trying to answer questions based on their firsthand
11 knowledge or the knowledge of a 30(b)(6) witness; two, trying
12 to do it in a way that provides the information that they have
13 cooperatively; and, three, the unique circumstances, here Mr.
14 Dong is alone in a hotel room, eight hours from home, answering
15 questions in a U.S. litigation, and he's going there because he
16 can't do this under Chinese law. So he's taking himself out of
17 the Chinese legal system so he can answer these questions.

18 6,194 pages of testimony and plaintiffs are challenging
19 less than one percent.

20 JUDGE VANASKIE: All right. Mr. Slater?

21 Do you want to stop sharing your screen?

22 Mr. Slater?

23 MR. SLATER: Sorry, I keep doing that with the mute
24 button. I didn't want my rustling papers to keep pulling the
25 screen.

1 Thank you, Judge.

2 A lot was just stated. I'll try to unpack it and I'll
3 try to start at the end because it was a theme that was
4 repeated multiple times by defense counsel that the witness
5 hadn't seen certain documents.

6 This witness is a 30(b)(6) witness. The argument that
7 we shouldn't be allowed to question the witness about a
8 document he didn't write or we have to lay some foundation
9 about how it was created when it's within the scope of his
10 designated topics, and that we can't use the document
11 otherwise, that's just -- that's a frivolous argument, and I
12 don't use that word lightly here, but that's what the 30(b)(6)
13 witness is for. That's why we chose to have these 30(b)(6)
14 depositions done this way to avoid the need to depose as many
15 individual witnesses. So I don't really understand that
16 argument.

17 The testimony you just saw from Peng Dong and from Linda
18 Lin, if counsel's not trying to make an excuse, which counsel
19 said I'm not making an excuse, because they think all the
20 testimony was appropriate, that's really where I think Your
21 Honor needs to start and stop with evaluating the testimony.

22 The litany of problems about witnesses flying to places
23 and they don't all speak English, these were the witnesses --
24 and Your Honor sat through many arguments about this where we
25 had issues, and we raised these arguments and we were told by

1 the defense we put up the people that we thought were best able
2 to talk about these things and don't complain, this is the
3 process we have, and we worked through it.

4 I think what you can also see is the questions were not
5 asked in an adversarial way. The questions were asked in a
6 straightforward, conversational way. The discussion with
7 counsel became a little bit more animated; but, frankly, Your
8 Honor, this was before we got to the point of the hearing with
9 Your Honor when we were still moving to strike testimony. And
10 I'll stand behind everything I said to counsel because, as we
11 know, and I'm quoting from the *Exxon* case, which cited to other
12 cases, including *GMAC*, "An attorney defending a deposition has
13 a duty to try to curb his client's misconduct in the
14 deposition." If you have a duty to do that, you have a duty to
15 explain the proceeding to your client before the deposition, to
16 explain what's going on.

17 So when counsel sits here and sits here just speculating
18 about what might have been in his client's mind, I think it's
19 obvious what's going on here. They have the right and the
20 ability to talk to their clients, they could have gotten
21 certifications, they could have done anything they wanted. So
22 when counsel's giving you his speculation about what might have
23 been in the witness's mind, again, that's neither here nor
24 there.

25 And, frankly, the focus on myself I think is something I

1 don't really want to add anything to, unless Your Honor thinks
2 there's a reason to, because if counsel thought we should have
3 filed a motion going to every single instance of the
4 obstruction, I don't think Your Honor would have appreciated
5 that because there is a heck of a lot more. And we have told
6 Your Honor how we'd like to, in an orderly way, proceed once we
7 have a ruling from Your Honor. So we've never said this is all
8 the examples. In fact, we said there's a ton more examples and
9 after we get through this first phase, then we intend to
10 address the rest, trying not to burden Your Honor as much as we
11 possibly can.

12 But when you hear counsel talk about flying to a place,
13 not speaking the language, alone in the room, we have a
14 deposition protocol that was built for these depositions,
15 knowing what was happening, and the deposition protocol said
16 all the rules had to apply. These depositions were covered not
17 just by the protocol but by the Federal Rules of Civil
18 Procedure, and there is no exception for a witness, especially
19 a witness chosen by the company to testify under 30(b)(6), to
20 be given a pass on question after question after question.

21 So I think all of those arguments are really window
22 dressing and really just an attempt to distract Your Honor away
23 from what's right in front of you, which is, witnesses who
24 either couldn't or wouldn't, whatever the case is, as Judge
25 Schwartz's decision in *Neurontin* really went through well and

1 the Third Circuit addressed, it's the same thing. If you can't
2 answer a question, it's the same as not showing up for your
3 deposition.

4 And Your Honor knows, again, we went through this,
5 because counsel was talking about the issues with the
6 translators and we had a back-and-forth about communication
7 issues and we were told by the defense in very strong terms,
8 this is the witnesses you get, don't complain about it, don't
9 make an issue of it, and, obviously, we had to live with that.
10 But here we are now with the consequences of what the defense
11 chose to do.

12 I think that the Linda Lin testimony might be a place
13 for me to try to wrap up. I couldn't have -- you know, I was
14 watching the testimony and I'm thinking to myself where's the
15 -- where's the problem here with the question. I mean, the
16 questions were fine and simple, they were not confrontational,
17 there was no issue with the translation. And remember who this
18 person is, Your Honor. This is the worldwide global head of
19 regulatory for all of ZHP whose job it is to make sure that all
20 interactions with all regulatory agencies around the world are
21 done appropriately. And, again, this is the witness who would
22 not answer a question of what is the definition of adulterated,
23 which came within her designations, just like the questions
24 asked of Peng Dong within his designation. And you haven't
25 heard one argument that there was questioning of any of these

1 witnesses that was outside the designated topics.

2 So what did we get with Linda Lin? We got no answer.

3 What we got was -- and I remembering, Your Honor, from those

4 late-night hearings with Peng Dong, and then the hearings the

5 next few days, what we got is the talking point Your Honor

6 remarked on back in those hearings: Nobody knew back then.

7 Nobody knew anything. That wasn't the question. The question

8 was, you didn't list this one component to the product, never

9 got an answer but we got the talking point over and over. So I

10 feel like that really made our point for us very well.

11 JUDGE VANASKIE: Let me interrupt you just for a

12 minute.

13 MR. SLATER: Go ahead.

14 JUDGE VANASKIE: On Friday, I believe it was, one of

15 your colleagues texted me to get involved in a problem with a

16 deposition that was ongoing but I didn't receive the text for

17 some reason; sometimes that happens. I didn't receive it until

18 the next day, so obviously I didn't -- I was sitting at my

19 office at my house. I was available, in other words.

20 I just want to suggest when that happens, also resort to

21 email and I would say even a phone call. Just this technology

22 sometimes doesn't work. It arrived the next day. Why? I

23 don't know. But I just want to let you know that I do try to

24 make myself as available as possible. It won't always be the

25 case, but that day I was available, just didn't get the text.

1 MR. SLATER: Maybe even more available than you would
2 want to be. You've always been -- you've been very available
3 for us, Your Honor. I mean, we were sending you messages
4 during a deposition in the middle of the night, Your Honor
5 jumped on, and we couldn't have been more appreciative to get
6 that response.

7 JUDGE VANASKIE: I wanted to mention that. I meant to
8 mention that earlier but I thought, well, I'll forget. So I
9 just wanted to mention that going forward so we can avoid
10 disputes and get them resolved when we can.

11 But what do you think is the right approach now for me
12 to resolve this motion? Do we go through each excerpt one by
13 one and look and see, was the witness responsive, not
14 responsive; or should I take a more wholistic view and try to
15 make the determination?

16 Mr. Goldberg cites some impressive numbers there that
17 say, wait a second, we're talking about a very, very small part
18 of this whole proceeding. Don't try to draw a conclusion of a
19 systemic problem from that sample size.

20 So I'm going to ask you, and then I will ask Mr.
21 Goldberg, how should I approach this motion?

22 MR. SLATER: I'll give you two responses. First I'll
23 respond to the second point.

24 Again, we submitted a pretty extensive list of examples
25 from multiple depositions and made it very clear this is not

1 the only examples, this was a major problem throughout all the
2 depositions, but we had to illustrate them and seek guidance by
3 picking and selecting.

4 So he has some impressive statistics, I'll be honest
5 with Your Honor, in a vacuum may be impressive, but I'd push
6 back on that to say, so what. These questions were important.
7 We have a right to have responsive answers to every question.
8 And, you know, what counsel's essentially doing is he's
9 building up, after saying, I'm not seeking to make an excuse,
10 he's building up a litany of excuses to get Your Honor to
11 somehow make some sort of equitable decision, well, these were
12 tough depositions, and, yeah, some of them didn't speak
13 English, so I guess I'm going to give you a break. And then
14 what happens.

15 Your Honor gave us clear guidance. We took these
16 depositions in reliance on that, we took all the testimony in
17 reliance on that, we stopped moving to strike because we knew
18 that we could come back to Your Honor and this would be the
19 first day of reckoning. So that's how I handle those
20 statistics.

21 I mean, this testimony's not just throw-away testimony.
22 And much of it, a couple of lines of questioning before they
23 could get started because these witnesses wouldn't admit very
24 basic foundational information needed to jump off into the rest
25 of the questions. So it was a wonderful job of obstructing.

1 What should you do? I don't know, Your Honor, that
2 there's -- when you say a wholistic way to handle it, I guess I
3 need to know what that means because my sense is that
4 ultimately, what has to be done is I think rulings need to be
5 made on each of the excerpts as to whether the responses were
6 responsive, whether the objections were appropriate, whether
7 the answer is stricken and whether it's deemed admitted.

8 Assuming Your Honor agrees with us that you have the
9 authority per the rules and case law and cases that have done
10 these things before, and have awarded sanctions based on
11 deposition conduct, understanding this is not an issue of
12 admissibility, that argument is a straw man, it has nothing to
13 do with admissibility, I don't know another way to do it
14 because what we don't want to do is -- our concern would be a
15 generalized ruling that sort of jives with what defense
16 counsel's saying, well, these are tough depositions.

17 Your Honor did everything you could, after Judge
18 Schneider entered an order, to carefully manage these
19 depositions. Your Honor jumped onto a deposition of Peng Dong
20 at ten or 11 at night and we held a hearing and then we went
21 back with the deposition. So I challenge defense counsel
22 saying there were some technological problems. Not with our
23 court reporters. These went very smoothly. Your Honor jumped
24 into a few depositions like that.

25 So all of those excuses, none of them are recognized in

1 the law. There is no case they can point to that points to
2 this. In fact, their cases, including the *Neurontin* case, say
3 that what needs to happen is what we've asked for.

4 Let's talk about what happens if you don't grant these
5 sanctions. We would have gone forward with the rest of these
6 depositions in reliance on what Your Honor told us and then, to
7 some extent, the board could have changed.

8 We're left with a very, very difficult situation because
9 we're now in expert depositions. We're getting ready to brief
10 *Daubert* and class cert.

11 So what does counsel want to do? I suppose the fallback
12 is going to be, well, Judge, I guess if you want to compel the
13 witnesses to go answer a handful of questions each, we can do
14 that. How's that helpful to us at this point to have to go
15 back? They've heard the questions. We're going to hear about
16 all sorts of logistical issues and it's going to go on forever.

17 So I think Your Honor recognized during those hearings
18 that the right way to handle this is to deem the questions
19 admitted because the witnesses had every opportunity, they have
20 counsel to speak to during every break, they could have come
21 back at the end and say, you were asked this question, we want
22 to just be clear exactly what your answer is. They could have
23 cleaned all this up. And, again, counsel wasn't over here and
24 the witness over there and they didn't communicate. They
25 represented them. So whatever the witness did, if there was

1 any kind of a misunderstanding, that's on counsel. And the
2 rules don't have exceptions built in because the witness is
3 around the world or we are doing it on Zoom. Again, the
4 protocol can't address everything and said all the law will
5 apply to these depositions as if it was in person.

6 JUDGE VANASKIE: Thank you.

7 All right, Mr. Goldberg.

8 MR. GOLDBERG: Thank you, Your Honor.

9 I think on the question about what Your Honor should do,
10 Your Honor, we provided in Exhibit A of our brief a
11 point-by-point response on each excerpt, and if Your Honor felt
12 inclined to go through those, if that's what Your Honor thought
13 Your Honor needed to do, I think Your Honor will be -- will
14 find each of those responses demonstrates that Mr. Slater's
15 questions were often vague, compound, they asked for expert
16 testimony, they were taken out of context, they asked -- they
17 asked about documents that clearly spoke for themselves. So I
18 think if Your Honor wanted to go through that, that information
19 is there.

20 However, I think Your Honor, in terms of what is
21 required under -- under Third Circuit law and on this record, I
22 think Your Honor can and should dismiss -- deny this motion in
23 its entirety because the standard is egregious conduct,
24 intentional bad-faith conduct. That's the standard for
25 providing the kind of sanction that Mr. Slater is asking for,

1 which is to deem facts or questions admitted. And it's
2 interesting in all -- and I would encourage Your Honor to
3 review the *Black Horse* case, to review the *John Doe* case that
4 Mr. Slater cited.

5 This is what the Court said in the *Black Horse* case
6 which plaintiffs rely on that, "The witness was so unprepared
7 that it was clear that it was not just a lack of preparation,
8 that wasn't a mere oversight, but a clear demonstration of bad
9 faith, made obvious by the witness's repeated denial as a
10 30(b)(6) witness, his apparent incompetence, his lack of
11 cooperation, his refusal to answer questions intelligently,
12 boarding on," as the Court put it, "almost conscious disregard
13 of the Court and the rules."

14 Your Honor, none -- all of the excerpts cited by
15 plaintiffs show the ZHP party witnesses earnestly answering the
16 questions based on their firsthand knowledge and that of a
17 30(b)(6) representative. We're seeking clarification to do so.
18 There is no genuine assertion that any 30(b)(6) witness was not
19 adequately prepared or the most knowledgeable on the topic.
20 That has not been asserted.

21 To be sure, Your Honor, a 30(b)(6) witness is not
22 required to have knowledge about every single document or fact
23 that plaintiffs' counsel may believe falls within a broadly
24 worded 30(b)(6) topic. 30(b)(6) topics are not contention
25 interrogatories, they're not to be wielded as a sword.

1 30(b)(6) witnesses need to be knowledgeable on the topic and
2 there is no assertion that any of these witnesses weren't.

3 Counsel's objections were not speaking objections, they
4 were not speeches, they were not coaching. Rather they adhered
5 to Your Honor's ruling that the lawyers provide a succinct
6 basis for the objection, and they were necessary and
7 appropriate to preserve the objection for trial.

8 Probably the most important aspect of these excerpts is
9 that nowhere was a witness instructed not to answer a question,
10 nowhere did a witness outright refuse to answer a question.
11 And when you look at the case law, Your Honor, those things
12 have to happen but they have to happen repeatedly and
13 pervasively.

14 It's interesting how plaintiffs set this motion up
15 because they've cherry-picked a few excerpts from a few
16 different witnesses and they're saying that's pervasive. But
17 Ms. Lin, they only have five excerpts from her, it's not even
18 pervasive within her deposition. You would have to look at
19 each of the witness's depositions and say, did that witness
20 repeatedly and pervasively obstruct the Court's rules for the
21 entire deposition rendering the deposition meaningless. That's
22 the standard. Plaintiffs have not come close to satisfying
23 that standard as to any of the witnesses, let alone all of the
24 witnesses.

25 So under the case law, Your Honor could and should deny

1 this motion in its entirety.

2 JUDGE VANASKIE: Thank you, Mr. Goldberg.

3 Mr. Slater, rebuttal and then we will move on to the
4 next part of our call.

5 MR. SLATER: Thank you, Your Honor. And I'm going to
6 try to rattle these off.

7 Number one, the document speaks for itself is not a
8 proper objection. Defense counsel took something Your Honor
9 said out of context. There is no case that's going to say
10 that's a proper objection; otherwise, you could never ask about
11 a document in order to lay a foundation. So that's frivolous.

12 The need to show bad faith or willful misconduct: Even
13 though we think it's been demonstrated, in our brief, our reply
14 brief, on Page 5, we cited *Estate of Spear*, Third Circuit, you
15 don't need to show that in all cases, so that's not required.

16 There was testimony that there were no speaking
17 objections. Your Honor, we've given you examples of objections
18 that were repeated verbatim practically by the witnesses
19 multiple times. So that's -- that makes no sense and we've
20 given you solid examples of speaking objections.

21 The other cases, as I've already said before, they
22 didn't seek to deem the testimony admitted, even though the
23 court rule specifically says that's an appropriate sanction,
24 and it's always a sanction that's available to this Court.

25 The witness is not required to be able to answer all

1 questions: There is not one question that defense counsel has
2 pointed to and said, this one really doesn't seem to fit in the
3 topic; therefore, who would expect the witness to know the
4 answer. Your Honor has just saw the examples of Linda Lin and
5 Peng Dong and nothing could be more basic. These are their
6 basic corporate documents and they wouldn't answer the
7 questions. And I take serious issue with the idea that the
8 witness didn't refuse to answer questions. The Linda Lin
9 testimony was the perfect example. It was a perfect example
10 where she was asked, you didn't list this impurity in the Drug
11 Master File when you revised it for the FDA, and she kept
12 saying the talking point, nobody knew back then. The question
13 was, was it listed or not. That's a refusal to answer.

14 Hai Wang, I gave you, on Page 33 and 34 of our initial
15 brief, testimony where he was asked over and over again, did
16 ZHP ever, before June of 2018, disclose to any of your --
17 anybody the presence of NDMA or a nitrosamine in the product,
18 which Your Honor knows is an important question since we have
19 documents that show they knew way before that, he never answers
20 the question. He just kept giving the point: If we didn't
21 know, how could we say anything. Nobody knew. FDA didn't
22 know.

23 So there's multiple examples where the witnesses
24 willfully refused to answer over and over again, and what you
25 got is -- I commend to Your Honor Page 33 and 34 of our initial

1 brief Hai Wang, Excerpt 2, where Mr. Goldberg took the very,
2 very strident position that the witness was acting
3 appropriately.

4 And this is where I want to end. I think you have to
5 look at the credibility of our positions on this, too. And for
6 defense counsel to say to you on the record that every single
7 objection and every single answer fully complied with the rules
8 destroys any semblance of credibility that you should give to
9 any of the other arguments because the answers are so obviously
10 not responsive that nobody could say that in any objectively
11 reasonable way.

12 And I'm going to end, and final closing, yeah, we only
13 gave, what did he say, 51 examples. Only? I've never had to
14 submit this many examples of obstructive refusal to answer in
15 any case I've ever worked on. And I can assure Your Honor,
16 more will come. But, again, I don't think defense counsel
17 really means what they are saying because what were we supposed
18 to do, put hundreds and hundreds of examples for Your Honor at
19 this stage? It didn't seem to be efficient to do it that way.

20 So we ask Your Honor to grant the relief that we've
21 asked for, assess all the sanctions we've requested; otherwise,
22 you'll be telling the defendants, obstruct, dance, bob, weave,
23 don't worry, at the end of the day, nobody's going to want to
24 take the step to make a severe sanction so this doesn't happen
25 anymore. And I think what we've seen is an example of

1 testimony and obstruction that needs a strong response by the
2 Court.

3 Thank you.

4 JUDGE VANASKIE: Thank you, Mr. Slater.

5 Mr. Goldberg, brief rebuttal?

6 MR. GOLDBERG: Your Honor, I think credibility is a
7 really good place to start because it seems awfully incredible
8 to say that based on 0.82 percent of the testimony, Your Honor
9 should conclude that 99 plus percent of the testimony is bad
10 testimony, is bad faith, is egregious. That is an incredible
11 position that Mr. Slater is asking you to take. It's
12 incredible that he's doing it based on the excerpts only of his
13 testimony. None of his colleagues have joined him in that. He
14 is asking you to ignore that fact and, nonetheless, use less
15 than one percent to extrapolate as to the rest of the
16 testimony, the rest of the 6,194 pages. That is an incredible
17 position. That goes to credibility. That goes to the
18 credibility of this motion. It is empty rhetoric, the entire
19 thing, and should be denied in its entirety.

20 Your Honor, Mr. Slater had every, every available
21 opportunity during every single deposition, he used it. Your
22 Honor just said it today. If there were really pervasive
23 conduct, do you think he would have taken all 17 depositions?
24 After we had those hearings in March, that was only after six
25 depositions. Eleven more depositions happened and Mr. Slater

1 did not call Your Honor, did not say, Your Honor, I can't get
2 through this deposition because counsel's obstructing, I can't
3 get through this deposition because the witness won't answer
4 the question. Guess what? That's why we called Your Honor on
5 Friday, because the witness refused -- the plaintiff in the
6 case refused to testify about her mental capacity. And so we
7 called Your Honor because Your Honor gave us the availability,
8 Your Honor made yourself available for us to do it. And Mr.
9 Slater could have done that. If these depositions, the worst
10 of the worst, these are his examples, the worst of the worst,
11 if he couldn't get through these depositions, he would have
12 called you.

13 One other thing, Your Honor. I think it's really
14 important for Your Honor, as you're going through their
15 excerpts, they created these 51 excerpts, but, Your Honor, you
16 can look at how they did it and they've pieced these together
17 in the same portions of testimony so that it appears like there
18 are a lot of excerpts but these are just, you know, longer --
19 these are just passages of testimony that are cut up in little
20 pieces. But even still, you're talking about less than 0.82
21 percent. So there's a little bit of smoke and mirrors here in
22 addition to the lack of credibility of the argument Mr. Slater
23 is making.

24 We think the standard for the kind of admissions that
25 he's asking for, the ultimate question, it's not in any case he

1 cited, it would require the most extreme form of conduct, and
2 there's not any legal support for it in any of the case law
3 that either party cited. It hasn't happened and it would
4 require pervasive, repeated obstruction by each of the
5 witnesses.

6 So we ask Your Honor to deny the motion in its entirety
7 and if Your Honor feels like the need is to go through each of
8 the excerpts, we would be happy to do that with Your Honor and
9 provide argument, and we've also set it forth in Exhibit A of
10 our brief.

11 JUDGE VANASKIE: Thank you.

12 Would it be appropriate -- am I muted? No, I'm not
13 muted.

14 Would it be appropriate for me to authorize plaintiffs
15 to serve requests for admissions on the points that Mr. Slater
16 wants to have deemed admitted and give you the opportunity to
17 respond to them?

18 MR. GOLDBERG: Absolutely not, Your Honor. And I can
19 say that because this Court, throughout this case, made a
20 decision that there would not be requests for admissions. And
21 now to have Mr. Slater turn the discovery process upside-down
22 simply because he did not like the answers to some of the
23 questions, and, again, try to obtain admissions on the ultimate
24 question, when the Court was clear that there wouldn't be
25 requests for admissions, would disrupt the entire discovery

1 process not just for ZHP but for all of the other defendants
2 and for this entire MDL.

3 JUDGE VANASKIE: Thank you.

4 MR. SLATER: Your Honor, I could also speak to that.
5 I, frankly, would not welcome that, and I'll tell you why.

6 JUDGE VANASKIE: Okay.

7 MR. SLATER: This was our chance to take deposition
8 testimony of the company. This was our one time. And I'll
9 give you an example. Min Li who said you need a toxicologist,
10 they didn't designate a toxicologist but he refused to answer a
11 series of questions that weren't on the ultimate question in
12 the case. And, frankly, even if they were, where's the case
13 that says you can't ask the defendant the ultimate issues. Of
14 course you can. That's what we do all the time in 30(b)(6) and
15 other depositions. You always try to get the defendant to
16 admit its fault. So I don't know what doctrine defense counsel
17 is relying on.

18 But I want to say, so when we're taking these
19 depositions, I get an evasive answer or someone else gets an
20 evasive answer, that's where we need to follow up and dig and
21 we were blocked from doing that. But requests for admissions
22 would prevent us from getting the ability to follow up and do
23 what we need to do.

24 The last thing, I chuckled, I think, when counsel said
25 we stopped asking for Your Honor to intervene during these

1 depositions so we must have thought everything was going fine.
2 No, I think contrary to some popular belief, I learned my
3 lesson when Your Honor told us in very plain terms, this is
4 what you're going to do, these are the rules, these are going
5 to be the consequences, go forth and battle, but what I heard
6 is, don't keep calling me with the same question. You're big
7 boys and girls, you should know how to do this. So we relied
8 on Your Honor's ruling and we knew that at the end of the day
9 that there was going to be consequences and chickens were going
10 to come home to roost, and this is the time now.

11 I would suggest that you probably haven't seen too many
12 cases at this level with this much at stake with witnesses
13 providing such nonresponsive, nonsubstantive testimony. And I
14 think, again, this needs a very strong statement from the Court
15 because I think these defendants, and all defendants across the
16 justice system, need to know you can't do this. I mean,
17 imagine if you don't do it, what we're asking, what we've done,
18 we lost our chance to take the key testimony from the key
19 witnesses when the Court gave us all that time to do it, that
20 train leaving the station or left the station, think about the
21 prejudice to us if we don't get the relief that Your Honor had
22 foreshadowed and for whatever reason defense counsel didn't
23 want to fix it and didn't want to proceed differently, but we
24 ask for that relief now.

25 JUDGE VANASKIE: Thank you very much.

1 We'll take the matter under advisement.

2 MR. SLATER: Thank you.

3 JUDGE VANASKIE: We will issue a written opinion on
4 it.

5 Let me just pull up the agenda letters. There is not
6 much on the agenda for today.

7 So we have a dispute over whether counsel can be present
8 for defending expert witness depositions. Do I understand the
9 dispute correctly?

10 MR. SLATER: Where the deposition will be taken by
11 Zoom and there will be nobody else from the other side in the
12 room, as we agreed to do for the plaintiff experts who were
13 deposed by Zoom and were done with them alone in a room.

14 JUDGE VANASKIE: All right. Who will be addressing
15 this issue for the defense?

16 MR. HARKINS: Good afternoon, Your Honor. This is
17 Steve Harkins with Greenberg Traurig for the Teva defendants
18 and the Joint Defense Group.

19 On behalf of the defendants, just to reiterate largely
20 what's laid out in our position statement, we disagree with the
21 characterization that this was agreed upon for purposes of the
22 plaintiffs' deposition. As noted in CMO 30, it specifically
23 contemplated that for witness depositions, defense counsel
24 could be present regardless of whether or not the opposing
25 attorney was present in person or taking the deposition

1 remotely. Similarly, the plaintiffs' experts at issue had
2 objected to having their depositions taken in person.

3 We briefly raised this issue with Your Honor and the
4 parties were able to resolve that dispute over witnesses who
5 were uncomfortable appearing in person for deposition by
6 agreeing to have all parties appear remotely. That's different
7 than the situation here where most, if not all, of the defense
8 experts are willing to appear in person. Defense counsel is
9 willing to attend those depositions in person. And if, at the
10 time that we made the concession that we would agree to depose
11 those plaintiffs' experts remotely, we had thought that it was
12 going to unilaterally give the deposing party the ability to
13 prevent us from appearing and defending our witness's
14 deposition in person, we certainly would not have agreed to it.
15 We've looked at the email that was submitted as an exhibit and
16 don't believe that it confirms anything beyond the specific
17 agreement that we made at the time.

18 Defense counsel has been consistent that if a witness
19 has a legitimate medical concern about appearing for a
20 deposition in person, we will take reasonable precautions to
21 make that witness comfortable; and in this case, for those
22 plaintiffs' experts, it involved agreeing to not take their
23 depositions in person. That is not the case here. And we
24 think that the standard which has prevailed in this case for
25 the fact witnesses -- and we noted in the footnote to our

1 submission three witnesses who were, in fact, deposed where
2 plaintiffs' counsel appeared only remotely but the defending
3 attorney appeared in person, and we did not have the full
4 numbers for that at the time of our submission yesterday, but I
5 have confirmed that at least seven other depositions took place
6 similarly, and at no time in going through that process did we
7 receive any objections from plaintiffs' counsel.

8 So we think that the standard in the case thus far is,
9 in fact, that defense counsel has the right to appear and
10 defend these depositions in person regardless of whether or not
11 plaintiffs choose to depose those witnesses remotely.

12 JUDGE VANASKIE: Mr. Slater.

13 MR. SLATER: Thank you, Your Honor.

14 All we want to do is have a level playing field. We're
15 not seeking any advantage. We're simply seeking to do things
16 the same way. I remember when Your Honor ruled on the -- I
17 don't remember how you characterized it, but I don't think you
18 were impressed by the fact that we had to bring to Your Honor
19 how many people could be in the room with the witness. I made
20 it clear on the record with Your Honor this is going to go both
21 ways, you're not going to keep ruling on this going one side to
22 the other, and Your Honor said, yes, of course.

23 If the plaintiffs are not going to be in the room with
24 the witness, the defendants shouldn't be in the room with the
25 witness. There's no prejudice. The witness sits in a room,

1 the lawyer can be in the other room. They can meet during
2 breaks or they can do it by Zoom. I defended a deposition for
3 a witness in Minnesota. No plaintiffs' counsel was in
4 Minnesota. We defended the deposition, it went very smoothly,
5 it was no issue. There's absolutely no prejudice that defense
6 counsel can point to.

7 And I think that what we're all going to have to start
8 to realize, because this issue is going to come to Your Honor
9 on the bellwether depositions too, I believe, I know that
10 there's some talk right now, contrary to what some people on
11 the defense think, COVID's not done. In fact, the COVID we had
12 a year and a half ago isn't the COVID we have today. People
13 who are fully vaccinated are getting sick. I know some of
14 them. I'm sure we probably all know some people like that.

15 JUDGE VANASKIE: I do too.

16 MR. SLATER: So I think that if plaintiffs' counsel
17 isn't going to travel across the country to go depose some of
18 these witnesses, I think that it's reasonable to have the
19 witness be alone on Zoom and just have a level playing field.
20 Nobody loses anything and we're all -- we're all handled the
21 same way.

22 JUDGE VANASKIE: Mr. Slater, how are you prejudiced by
23 the opposite point of view; that is, so if I understand it,
24 you're taking the defense expert witness, you're doing it
25 remotely but the defense lawyer's there with the witness, how

1 are you prejudiced?

2 MR. SLATER: I think that there's a concern that we
3 addressed when we said we wanted to have two -- I think two of
4 the plaintiffs' experts or three of them deposed remotely, the
5 way that we got the defense to agree was we agreed we're not
6 going to be in the room with the witness. The witness will be
7 alone so that counsel who's defending the deposition, we don't
8 have to worry about what somebody's signaling. We don't have
9 to worry did somebody indicate to the witness yes or no how to
10 answer the question. We don't need those battles in this case.
11 We already know the temperature and we already know that -- I
12 know when my expert was being deposed a few weeks ago, Dr.
13 Hecht, he was asked, is anyone in the room with you, what's on
14 the screens you're looking at, do you have a phone on, any of
15 these things, all reasonable questions. We asked similar
16 questions of the witnesses from ZHP in Macao. Fine. But why
17 leave this open that if something happened and there's
18 suspicion, why leave it open to have that concern, because that
19 is our concern. It could be something that's done very subtly,
20 but we don't want to have the risk that the witness is getting
21 any sort of a signal on how to handle things. And that's why
22 the defense didn't want us in the room with our experts, and,
23 frankly, I understand it. This isn't an attack on anyone's
24 integrity. It's a simple, smooth way to avoid any
25 misunderstanding later on that could become very ugly.

1 JUDGE VANASKIE: Any response?

2 MR. HARKINS: Your Honor, just briefly on the health
3 concerns.

4 Defense counsel has not taken the position that any
5 counsel needs to be present in the room. Defense counsel is
6 not taking the position that all of their experts, regardless
7 of their level of comfort, need to be present and have to allow
8 counsel to be present in person. The fallback here is the
9 preference of the witness.

10 Our understanding when we agreed to the parameters that
11 were put forth for the plaintiffs' experts who did not want to
12 be deposed in person was that it was based on their preference
13 as a legitimate health issue. To the extent any of the defense
14 experts have the same concern and do not want to be deposed in
15 person, we would make a similar arrangement and not,
16 essentially, depose or defend those experts in person. But
17 where our experts are available, they are more comfortable
18 being deposed in person with counsel present, we think that
19 that should be the fallback as it's been for the fact witness
20 depositions and as we still understood it to be the fallback
21 position with respect to general witness preference even for
22 the plaintiffs' depositions that have already taken place.

23 MR. SLATER: So there you have it. There you have it,
24 Your Honor. If the witness doesn't want to be deposed in
25 person, so it's the witness's choice, there will be no counsel

1 in the room because that's what we agreed to do to protect the
2 integrity of the proceeding or any appearance of a lack of
3 integrity. So I agreed not to be there and we all agreed not
4 to be there with our witnesses or have anyone there with them.
5 Who decides it's going to be on Zoom is neither here nor there;
6 it should just be a process that's consistent.

7 MR. HARKINS: Your Honor, I would just note that if
8 this process were applied in this instance, it would amount to
9 us having requested to take depositions in person and having
10 been prevented from attending those depositions in person by
11 the decisions of plaintiffs' experts, but then have been
12 deprived of the ability to defend our depositions in person
13 based on the decision of plaintiffs, which I believe would be
14 inequitable to defendants in this case.

15 JUDGE VANASKIE: I'm trying to be sensitive to health
16 concerns and sensitive to issues of fairness. I am inclined to
17 agree that if the witness is comfortable being in person, then
18 defending counsel, counsel defending the deposition, can be in
19 person as well, if that's what they feel comfortable with.
20 Plaintiffs' counsel could be in person if they feel comfortable
21 doing it but don't have to. You know, we didn't get to the
22 point where all the depositions were going to be remote. I'm
23 struggling with my recollection in terms of what we did decide;
24 but, generally speaking, I would defer to the witnesses. If
25 the witness is not comfortable being in person, then the

1 deposition would be conducted remotely with no one present with
2 the witness. But if the witness says, hey, I'll be there, I
3 was served a notice for me to come to Adam Slater's office,
4 I'll be there, then I think it should occur with counsel
5 present under those limits that we set, the numerical limits
6 that we set, and proceed in that manner. I don't see the
7 unfairness of doing it that way because you have the option of
8 being present.

9 I understand that puts you at a health risk, I
10 understand that.

11 You're right, Mr. Slater, I know in my extended family
12 breakthrough cases have occurred. I just went out and got
13 tested again, even though I had COVID, just to be sure because
14 I was in close personal contact because, you know, we let our
15 guards down because we thought we could because we've all been
16 vaccinated, et cetera. So I understand the concerns, but the
17 ruling I'm making is if a witness says, I will appear for the
18 deposition, then the witness can have counsel present to
19 defend, counsel on the other side can be there to take the
20 deposition or could say, I'm concerned, I'm going to do it
21 remotely, and I think that's sensitive to everybody's concerns.
22 All right?

23 MR. SLATER: Thank you, Your Honor.

24 And one thing just for the record, I don't think there
25 is any dispute on this, counsel confirmed that they still will

1 have -- anybody that's in the room with the witness for defense
2 side will still be on video so we can see what they're doing.
3 And I can tell you what we'll probably do at this point is hire
4 somebody, it depends what cities these are in, I don't even
5 know that we have plaintiffs' counsel, and have somebody in the
6 room representing the plaintiffs. I mean, that's what we're
7 going to have to do, I guess, we're going to have someone in
8 the room, unfortunately.

9 JUDGE VANASKIE: I'm sorry for that, but I think
10 that's a fair way to do it.

11 MR. SLATER: No, understood. I wasn't rearguing the
12 issue. I was just making sure for the record it was clear
13 that's how we intend to handle it.

14 JUDGE VANASKIE: Now, that concludes that issue.

15 We also have, I understand that Plaintiffs' Fact Sheets
16 are being prepared and distributed. Is that right, Ms.
17 Whiteley? I see you popped up on the screen. You're still
18 muted though.

19 MS. WHITELEY: Sorry. Consistent with your order, of
20 the 34 new plaintiffs at issue, we've uploaded just over 20
21 Plaintiff Fact Sheets to date and we expect to have that
22 finalized by next week.

23 We have begun to gather deposition dates and we want
24 to -- plan to have about seven to nine of those to defense
25 counsel this week. And then we'll be rolling out additional

1 dates as we're able to lock those in with the plaintiffs.

2 Late yesterday afternoon defense counsel reached out in
3 response to our request to begin coordinating, and they've
4 asked for a meet and confer to discuss logistics, and we will
5 be doing that with them as soon as we can find a time that
6 works for the group.

7 JUDGE VANASKIE: All right. Great, thanks.

8 Anybody addressing this on the defense side?

9 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
10 think Ms. Whiteley stated it accurately. We are going to
11 hopefully meet with plaintiffs to try to establish some sort of
12 expedited framework to get all of the materials we need to be
13 able to take the depositions in time.

14 JUDGE VANASKIE: All right. Thank you.

15 Anything else for today?

16 MR. GOLDBERG: Nothing from defendants, Your Honor.

17 MR. SLATER: I don't believe there's anything from
18 plaintiffs.

19 JUDGE VANASKIE: I have one more matter that's a bit
20 difficult for me to raise but I'm going to raise it because I
21 think I should. And I'll ask Mr. Goldberg for his assistance
22 in getting this done.

23 I have agreed to submit separate statements, separate
24 bills, to each of six defendants and several defendants haven't
25 paid. And I don't want to raise it with Judge Kugler but I'll

1 have to, in fairness to my law firm, if that's not done. So
2 I'll ask you to please reach out and find out what's the delay
3 and what needs to be done, please.

4 MR. GOLDBERG: Okay, Your Honor.

5 JUDGE VANASKIE: All right. Thank you all very much.
6 We are adjourned.

7 MR. SLATER: Thank you, Your Honor.

8 JUDGE VANASKIE: Thanks.

9 (The proceedings concluded at 4:50 p.m.)

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12 I certify that the foregoing is a correct transcript
13 from the record of proceedings in the above-entitled matter.

14

15 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR
16 Court Reporter/Transcriber

17 September 12, 2021
18 Date

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